

Below is the Order of the Court.



*Mary Jo Heston*

**Mary Jo Heston**  
**U.S. Bankruptcy Judge**

(Dated as of Entered on Docket date above)

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

In re:

SARAH HOOVER,

Debtor.

Bk. No. 19-42890

SARAH HOOVER,

Plaintiff,

Adversary No. 20-04002

v.

**ORDER DENYING MOTION FOR  
RECONSIDERATION**

QUALITY LOAN SERVICE CORPORATION  
OF WASHINGTON; PHH MORTGAGE  
CORPORATION D/B/A PHH MORTGAGE  
SERVICES; HSBC BANK USA, N.A., AS  
TRUSTEE OF THE FIELDSTONE  
MORTGAGE INVESTMENT TRUST,  
SERIES 2006-2; NEWREZ, LLC; AND IH6  
PROPERTY WASHINGTON, L.P. D/B/A  
INVITATION HOMES,

Defendants.

**INTRODUCTION**

This matter came before the Court on the Defendant PHH Mortgage Corporation's, HSBC Bank USA, N.A.'s, and New Rez, LLC's (collectively "PHH") Amended Motion for

1 Reconsideration (the “Motion”), ECF No. 94, of this Court’s Memorandum Decision on Cross-  
2 Motions for Summary Judgment, ECF No. 81, and Order on Cross-Motions for Summary  
3 Judgment, ECF No. 82, entered on February 8, 2021 (together the “Decision”).<sup>1</sup> Specifically  
4 PHH requests this Court reconsider the following findings of fact and conclusions of law under  
5 Fed. R. Civ. P. 60 (b)(1), (2), and (6) (FRCP 60): (1) the conclusion that PHH “willfully” violated  
6 the automatic stay based on the undisputed facts; (2) the finding that PHH’s actions showed a  
7 “complete disregard for the automatic stay and Ms. Hoover’s rights despite receiving notice of  
8 the Bankruptcy[.]”<sup>2</sup> ECF No. 81, and its potential preclusive effect on damages; (3) the finding  
9 that Ms. Hoover proved damages sufficient to grant her motion for partial summary judgment  
10 on PHH’s liability for willfully violating the stay; and (4) the conclusion that denying stay  
11 annulment was appropriate because the balance of equities favors Ms. Hoover.

12 The Court’s detailed factual findings are explained in the Decision and are incorporated  
13 by reference. Based on the Motion, the Decision, and the record on summary judgment, the  
14 Court makes the following findings and conclusions on the Motion without the need for further  
15 briefing or a hearing.<sup>3</sup>

## 16 **FINDINGS AND CONCLUSIONS**

### 17 **A. Reconsideration Motion Standards Under FRCP 60(b) – In General.**

18 Motions for relief under FRCP 60(b) are addressed to the sound discretion of the court  
19 and reversal requires some abuse of discretion. *Barber v. Hawaii*, 42 F.3d 1185, 1198 (9th Cir.  
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22 <sup>1</sup> Only Defendant PHH seeks reconsideration of the Decision. Also, on February 26, 2021, PHH filed a notice of  
23 appeal and motion for leave to appeal the interlocutory Decision to the District Court of the Western District of  
Washington. See ECF Nos. 89, 90. The Court has set June 2, 2021, and thereafter for an evidentiary hearing on  
damages. On March 15, 2021, PHH filed a motion to stay the adversary proceeding pending the appeal, ECF No.  
95, which is scheduled for hearing on March 29, 2021.

24 <sup>2</sup> All defined terms used in the Decision are incorporated in this order.

25 <sup>3</sup> Neither FRCP 60 nor Fed. Bankr. R. P. 9024 require a hearing on a 60(b) motion and the court has substantial  
discretion in determining whether to conduct an evidentiary hearing. *United States v. 8136 S. Dobson Street*,  
*Chicago, Ill.*, 125 F.3d 1076, 1086 (7th Cir. 1997), *cert. denied sub nom. Anderson v. United States*, 523 U.S.  
1111 (1998).

1994). In general, a bankruptcy court abuses its discretion if it applies the wrong legal standard, misapplies the correct legal standard, or if its factual findings are illogical, implausible, or without support in inferences that may be drawn from the facts in the record. See *TrafficSchool.com, Inc. v. Edriver Inc.*, 653 F.3d 820, 832 (9th Cir. 2011) (citing *United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir.2009) (*en banc*)). Accordingly, a motion for relief that merely revisits old issues the trial court already ruled on, or advances supporting facts that were available when the issues were originally briefed, will generally not be granted. See *In re Negrete*, 183 B.R. 195, 197 (9th Cir. BAP 1995). In sum, to succeed under a motion for reconsideration, a party must set forth new facts or new law to induce the court to reverse its prior decision. See *Negrete*, 183 B.R. at 197.

PHH cites specifically to FRCP 60 (b) (1), (2), and (6) as the legal basis for its Motion.<sup>4</sup> The party seeking relief has the burden of establishing that grounds exist under FRCP 60(b). *Cassidy v. Tenorio*, 856 F.2d 1412, 1415 (9th Cir. 1988).

**B. PHH Has Not Met its Burden of Proof for Reconsideration Under FRCP 60(b)(1), (2) or (6).**

**1. PHH's Requests for Relief Do Not Satisfy the Requirements for Relief Under FRCP 60(b)(1).**

FRCP 60(b)(1) permits a court to reconsider its prior order based on: "(1) mistake, inadvertence, surprise, or excusable neglect." PHH does not allege "inadvertence, surprise, or excusable neglect[.]" making "mistake" the only possible basis for seeking reconsideration under FRCP 60(b)(1). Correctable mistakes include either clear mistakes of fact or clear errors

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<sup>4</sup> Motions for reconsideration of a summary judgment are generally brought under FRCP 59(e) or FRCP 60(b). Courts are split on the issue of whether FRCP 59(e) can be used for interlocutory orders and there does not appear to be Ninth Circuit authority on this issue. However, motions filed after the 14-day period generally are considered under FRCP 60(b).

1 of law. See *Liberty Mut. Ins. Co. v. E.E.O.C.*, 691 F.2d 438, 441 (9th Cir. 1982) (citing *Gila River*  
2 *Ranch, Inc. v. United States*, 368 F.2d 354, 357 (9th Cir. 1966)).

3 a. The Court did not Commit Any Mistake of Law or Fact in Denying PHH's  
4 Motion to Annul the Stay.

5 PHH's request that the Court reconsider its denial to annul the automatic stay does not  
6 allege any mistake of law or fact. Instead, PHH expresses its disagreement with the Court's  
7 balancing of equities in favor of Ms. Hoover in denying stay annulment. PHH's disagreement,  
8 without presenting factual or legal error, is not a valid basis for this Court to reconsider its denial  
9 of PHH's stay annulment motion under FRCP 60(b)(1).

10 b. The Court did not Make an Error of Law in Determining that PHH Willfully  
11 Violated the Stay.

12 The Motion is devoted primarily to setting forth PHH's disagreement with the Court's  
13 conclusion that PHH willfully violated the stay. PHH admits that the willfulness test set forth in  
14 *In re Dyer*, 322 F.3d 1178, 1191 (9th Cir. 2003), is the correct legal standard though it  
15 characterizes the Court's application of this standard as "an extreme view of the willfulness  
16 standard[.]" See Amended Motion 9–10, ECF 94 (" . . . 'willfulness' standard for violations of the  
17 automatic stay does not require specific intent, but only knowledge of the bankruptcy and  
18 intentional conduct."). To support its mischaracterization of the Court's ruling and PHH's  
19 argument that the willfulness standard for stay violations is shifting away from *Dyer*, PHH  
20 primarily relies on dicta in *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1804 (2019), and post-*Taggart*  
21 cases.<sup>5</sup> These arguments do not establish any error of law and, therefore, reconsideration is  
22 denied under FRCP 60(b)(1).

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24  
25 <sup>5</sup> The Court notes that PHH did not make these arguments in the pleadings related to the summary judgment motion. Furthermore, *Taggart* involves a motion for contempt of a violation of a debtor's discharge. The U.S. Supreme Court specifically declined to decide the issue of whether the standard it enunciated for contempt of a

1 c. The Court Relied on the Undisputed Facts and Evidence in the Record in  
2 Concluding that PHH Willfully Violated the Stay.

3 Next, the Motion incorrectly asserts that the Decision misapplied the *Dyer* standard to  
4 the facts by taking the facts in the light most favorable to Ms. Hoover. In fact, the Court  
5 concluded that PHH willfully violated the stay because the *undisputed* facts and evidence in the  
6 record showed that PHH not only had notice of the Bankruptcy but had significant information  
7 produced from PHH's records (including the Ocwen records) about the borrower's, Ali  
8 Suleiman, death, Ms. Hoover's interest in the Bonney Lake Property and the key provisions of  
9 the Suleiman Trust well before the Sale including the following: (1) a letter to Ms. Hoover dated  
10 January 18, 2019, Prudent<sup>6</sup> Decl. Ex. 6, ECF No. 64 (acknowledging the borrower, Ali  
11 Suleiman's, death and receipt of the Suleiman Trust documents); (2) PHH's Bonney Lake  
12 Property Life of Loan Memo showing repeated exchanges between PHH and Ms. Hoover of  
13 documents and information, Henry Decl. Prudent Ex. 3, ECF No. 73; (3) a letter dated May 23,  
14 2019, acknowledging Ms. Hoover's request to complete a family transfer package, intent to and  
15 request to assume the loan in the name of the Suleiman Trust or individually, and identifying  
16 additional records to be provided, see Prudent Decl. Ex. 9, ECF No. 64; (4) a fax dated July 9,  
17 2019, from Ms. Hoover providing a copy of her driver's license and § B.2.3 of the Suleiman  
18 Trust, (i.e., the mandatory distribution language to Ms. Hoover as Ali Suleiman's daughter from  
19

20  
21 discharge injunction is the same standard to decide willfulness in the automatic stay violation context. In doing so,  
22 the Supreme Court notes several differences between the origin of the discharge's statutory language versus the  
23 stay, and it also notes policy differences that may support a different standard in the stay context. *Taggart*, 139 S.  
24 Ct. at 1801–1807. Also, this Court acknowledges PHH's reference to *In re Moo Jeong*, 2020 WL 1277575, at \*3  
(9th Cir. BAP Mar. 16, 2020), where the Ninth Circuit Bankruptcy Appellate Panel decision applied the “no fair  
25 ground of doubt” standard to automatic stay violations. However, *Moo Jeong* is distinguishable from this case,  
which involves § 362(k)(1). The *Moo Jeong* parties did not object to the standards used in that case, and the cited  
Ninth Circuit authority addressed a bankruptcy court's equitable powers under § 105(a), rather than § 362(k)(1)  
willful automatic stay violations.

<sup>6</sup> Sony Prudent is PHH's Federal Rule of Civil Procedure's 30(b)(6) designee witness who produced testimony at  
Ms. Hoover's deposition of him.

1 the Suleiman Trust upon his death subject only to her surviving him), Prudent Ex. 3, ECF No.  
2 73; (5) a fax confirmation and corresponding entry of receipt on July 8, 2019, in the Bonney  
3 Lake Property Life of Loan Memo of Ms. Hoover faxing the documents, see Hoover Decl. Exs.  
4 1, 4, ECF No 43, *and* Henry Decl. Prudent Ex. 3, ECF No. 73; (6) on September 9, 2019, PHH  
5 receives a fax about the Bankruptcy and images the fax into the Bonney Lake Property Life of  
6 Loan memo and files; Henry Decl. Ex. A, Prudent Dep. 85:21–86:1, ECF No. 73; (7) on  
7 September 12, 2019, Ocwen’s life of loan memo for the Bonney Lake Property notes “SARAH  
8 HOOVER FILED FOR BK CASE #19-42890-MJH MARY JO HESTON. CH 13 FILED on  
9 9.9.2019[.]” Henry Decl. Prudent Ex. 3, ECF No. 73; (8) Ms. Hoover also notifies PHH again,  
10 via telephone, of the Bankruptcy on September 12, 2019, Henry Decl. Prudent Ex. 13, ECF No.  
11 73 (Transcript of Recorded Telephone Call from Sarah Hoover to PHH Mortgage Corporation:  
12 “I filed bankruptcy.” Said Ms. Hoover to Ms. Robertson of PHH.).  
13

14 The Decision rejected PHH’s title arguments and paperwork arguments concerning Ms.  
15 Hoover’s confirmed successor-in-interest status because PHH’s records reflected substantial  
16 information about the Bonney Lake Property and Ms. Hoover’s relationship as a successor-in-  
17 interest under 12 C.F.R. § 1024.31 (involving a transfer to a relative resulting from the death of  
18 a borrower). That substantial information was sufficient to find that both Ms. Hoover held a  
19 protectable interest under 11 U.S.C. § 541(a),<sup>7</sup> and PHH knew of such interest in the Bonney  
20 Lake Property. The Motion’s arguments concerning PHH’s right hand not knowing what its left  
21 hand was doing does not negate PHH’s knowledge of the stay and Ms. Hoover’s interest in the  
22 Bonney Lake Property. It further ignores the basic legal principle that a corporation is charged  
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25 <sup>7</sup> Unless otherwise indicated, all chapter, section and rule references are to the Federal Bankruptcy Code,  
11 U.S.C. §§ 101–1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037.

1 with the knowledge of its employees acting within the scope of their employment and the  
2 knowledge of its own records. See, e.g., *Helton v. AT & T Inc.*, 709 F.3d 343, 356 (4th Cir. 2013)  
3 (citing numerous cases that support this assertion); 3 William Meade Fletcher, *Gen. Rules as*  
4 *Applied to Corps.*, Fletcher Cyc. Corp. § 790 (2020) (“the general rule is well established that a  
5 corporation is charged with constructive knowledge, regardless of its actual knowledge, or all  
6 material facts of which its officer or agent receives notice or acquires knowledge while acting in  
7 the course of employment within the scope of his or her authority, even though the officer or  
8 agent does not in fact communicate the knowledge to the corporation”); 5A William Meade  
9 Fletcher, *Admissibility and Effect of Books and Recs.—Against Dirs. and Offs.*, Fletcher Cyc.  
10 Corp. § 2203 (2020) (“Directors are charged with knowledge of matters contained in the  
11 corporate books and records”).

12  
13 In sum, the undisputed record on summary judgment shows that PHH willfully violated  
14 the stay because it undisputedly knew of the Bankruptcy before the Sale, had sufficient  
15 information in its records to show that Ms. Hoover had a clear protectable interest in the Bonney  
16 Lake Property under § 541(a), and failed to stop the Sale or inform the Trustee of these facts,  
17 which allowed a third-party purchaser to purchase the Bonney Lake Property. Based on the  
18 foregoing, PHH is not entitled to FRCP 60(b)(1) relief on this Court’s “willfulness” ruling.

19 d. The Court Did Not Err in Granting the Partial Motion for Summary Judgment  
20 on PHH’s Willfulness Without Requiring Additional Evidence of Damages.

21 Finally, under FRCP 60(b)(1), PHH fails in asserting that the Court mistakenly granted  
22 Ms. Hoover’s partial summary judgment on its willful stay violation without additional damages  
23 evidence. Unlike many causes of action that require proof of causation and the existence of  
24 specific damages as an element to prove liability, § 362(k)(1) provides that once a willful stay  
25 violation is shown, “an *individual . . . shall* recover actual damages, including *costs and*

attorneys'

fees

. . . .” § 362(k)(1) (emphasis added). In other words, Congress determined that individual debtors are entitled to legal representation for willful automatic stay violations, and the payment of attorneys and costs, without needing to prove anything further if they prevail in showing a willful stay violation. The record is clear from both the Complaint and the multiple pleadings Ms. Hoover’s attorneys have filed in this proceeding that, at a minimum, Ms. Hoover has incurred and intends to seek payment of her attorneys’ fees. Additionally, as the Decision and this Order note, the Court has set a hearing to determine the amount of attorney’s fees, costs, and other damages. Thus, the Court made no error of law redressable under FRCP 60(b)(1) in granting partial summary judgment to Ms. Hoover without further proof of damages.

2. PHH’s Requests for Relief Under FRCP 60(b)(2) Does Not Meet the Threshold Requirement of Showing “Newly Discovered Evidence.”

FRCP 60(b)(2) permits a court to reconsider its prior orders based on *newly discovered evidence* that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b). FRCP 60(b)(2) relief is warranted only if: (1) the moving party can show the evidence relied on in fact constitutes “newly discovered evidence” within the meaning of FRCP 60(b)(2); (2) the moving party exercised due diligence to discover this evidence; and (3) the newly discovered evidence must be of “such magnitude that production of it earlier would have been likely to change the disposition of the case.” *Feature Realty, Inc., v. City of Spokane*, 331 F.3d 1082, 1093 (9th Cir. 2003) (quoting *Coastal Transfer Co. v. Toyota Motor Sales, U.S.A., Inc.*, 833 F.2d 208, 211 (9th Cir.1987)). Applying these standards, the Court concludes the Motion does not meet FRCP 60(b)(2)’s requirements because it does not rely on any newly discovered evidence not already in the record.



1           3. PHH's Requests for Relief Under FRCP 60(b)(6) Do Not Show Extraordinary  
2           Circumstances Justifying Relief.

3           FRCP 60(b)(6) permits a court to reconsider its prior orders based on "any other reason  
4           that justifies relief." This subsection is mutually exclusive from relief sought under FRCP  
5           60(b)(1)–(5) and may only be used in "extraordinary circumstances." Accordingly, relief under  
6           FRCP 60(b)(6) is to be used sparingly as an equitable remedy to prevent manifest injustice.

7           *United States v. Alpine Land & Reservoir Co.*, 984 F.2d 1047, 1049 (9th Cir. 1993).

8           The Court concludes that the Motion does not set forth any extraordinary circumstances  
9           justifying equitable relief under FRCP 60(b)(6). While Rule 60(b)(6) can be used to clarify a  
10          court order in appropriate circumstances, *see, e.g., In re Int'l Fibercom, Inc.*, 503 F.3d 933, 947  
11          (9th Cir. 2007) (court did not abuse its discretion in reconsidering and clarifying its prior order  
12          under FRCP 60(b)(6)), those circumstances are not present here. The Motion does not fall  
13          within FRCP 60(b)(6)'s narrow purview in requesting to "clarify" the preclusive effect on  
14          damages of the Court's finding that PHH showed a complete disregard for the automatic stay,  
15          but instead requests an advisory opinion, which is not appropriate under FRCP 60(b)(6) or  
16          otherwise. As the Decision and this Order explain, this Court already contemplated a future  
17          hearing on damages, which is currently scheduled to begin on June 2, 2021. That hearing is to  
18          determine the amount of mandatory compensatory damages under § 362(k) and whether  
19          punitive damages are appropriate. PHH and Ms. Hoover will have a full opportunity to brief the  
20          legal standards for punitive damages plus a full hearing on the appropriate compensatory  
21          damages. Accordingly, PHH's request for clarification is denied under FRCP 60(b)(6).  
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**CONCLUSION**

Thus, based on the foregoing findings and conclusions about PHH's failure to show grounds sufficient for this Court to alter, amend, or reconsider the Decision under FRCP 60(b)(1), (2), and (6), it is hereby

**ORDERED** that PHH's Motion is DENIED.

/// End of Order ///